

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TANNER GARRETT VAUGHN, individually
and doing business as Lead Expose, Inc., and
Uptown Media, Inc.,

Defendant.

Case No. 2:11-cv-630-RAJ

**STIPULATED TEMPORARY
RESTRAINING ORDER**

On April 13, 2011, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint to secure temporary, preliminary, and permanent injunctive and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), for Defendant's acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. Plaintiff FTC and Defendant Tanner Garrett Vaughn, represented by the attorneys named below, have agreed to entry of this Stipulated Temporary Restraining Order ("Order").

NOW, THEREFORE, Plaintiff FTC and Defendant Tanner Garrett Vaughn, having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over the parties.

2. Venue lies properly with this Court.

3. Defendant Tanner Garret Vaughn has not admitted to liability as to the causes of action in the Complaint, and his consent to entry of this Order shall not be interpreted to constitute an admission that he has engaged in any violations of any law or regulation.

4. No security is required of any agency of the United States for the issuance of a temporary restraining order. *See* Fed. R. Civ. P. 65(c).

DEFINITIONS

For purposes of this Temporary Restraining Order ("Order"), the following definitions shall apply:

1. **"Acai Berry Products"** shall refer to any products, sold alone or in combination with companion products, that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains acai berries.

2. **"Asset" or "Assets"** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

3. **"Assisting others"** includes, but is not limited to: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (e) performing or providing marketing, billing, or collection services of any kind, including, but not limited to, creating, hosting, or maintaining websites, or recruiting affiliates; or (f) acting as an officer or director of a business entity.

1 4. **“Covered Product”** means any dietary supplement, food, or drug, including, but not
2 limited to, Acai Berry Products.

3 5. **“Defendant”** means Tanner Garret Vaughn, individually and doing business as
4 Lead Expose, Inc., and Uptown Media, Inc.

5 6. **“Document” or “Documents”** means any materials listed in Federal Rule of Civil
6 Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video
7 recordings, computer records, and other data compilations from which information can be obtained and
8 translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical
9 copy is a separate Document within the meaning of the term.

10 7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or
11 services.

12 8. **“Material connection”** means any relationship that materially affects the weight or
13 credibility of any endorsement and that would not be reasonably expected by consumers.

14 9. **“Person”** means a natural person, an organization or other legal entity, including a
15 corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or
16 any other group or combination acting as an entity.

17 10. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

18 **CONDUCT PROVISIONS**

19 **I. PROHIBITED BUSINESS ACTIVITIES**

20 **IT IS THEREFORE ORDERED** that Defendant, and his officers, agents, servants,
21 employees and attorneys, and all other persons in active concert or participation with any of them, who
22 receive actual notice of this Order by personal service or otherwise, whether acting directly or through
23 any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the
24 advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are
25 hereby temporarily restrained and enjoined from:

26 A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication,
27 that:

28 1. Any website or other publication, including sites using the domain names

1 www.BreakingNewsat6.com and www.Channel9NewsReport.com, is an objective news report;

2 2. Objective news reporters have performed independent tests of any product,
3 service, or program, including, but not limited to, a Covered Product; and

4 B. Failing to disclose, or disclose adequately, that the content of any website or other
5 publication, including sites using the domain names www.BreakingNewsat6.com and
6 www.Channel9NewsReport.com, has not been authored by an objective journalist but is in fact an
7 advertisement placed for compensation.

8 ASSET PROVISIONS

9 **II. ASSET PRESERVATION**

10 **IT IS FURTHER ORDERED** that:

11 A. Defendant, and his officers, agents, servants, employees, and attorneys, and all other
12 persons in active concert or participation with any of them, who receive actual notice of this Order by
13 personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary,
14 division, or other device, or any of them, are hereby restrained and enjoined from directly or indirectly
15 selling, transferring, alienating, liquidating, encumbering, pledging, loaning, assigning, concealing,
16 dissipating, converting, withdrawing or making any other disposition of any assets or any interest
17 therein, wherever located, including any assets outside the territorial United States, that are owned,
18 controlled or held by, or for the benefit of, in whole or in part, Defendant, or are in the actual or
19 constructive possession of Defendant.

20 B. The assets affected by this Section shall include both existing assets and assets acquired
21 after the effective date of this Order.

22 C. Notwithstanding Section II.A above, Defendant may withdraw, transfer, encumber, or
23 otherwise dissipate assets up to \$750.00 prior to the expiration of this Order to pay actual, ordinary,
24 and necessary business or living expenses that Defendant reasonably incurs and Defendant may also
25 pay any reasonable attorneys' fees. Further, funds currently held in retainer to pay reasonable
26 attorneys fees shall not be subject to this Order.

27 D. To the extent that Defendant withdraws, transfers, encumbers, or otherwise dissipates
28

assets pursuant to Section II.C of this Order, he shall provide an accounting of his expenses to counsel for the Commission no later than two business (2) days prior to expiration of this Order.

III. FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that by at least two (2) business days prior to expiration of this Order, Defendant shall provide to counsel for the Commission a completed financial statement accurate as of the date of entry of this Order, in the form provided as Attachment A for individuals, signed under penalty of perjury. The financial statement shall include assets held outside the territory of the United States, shall be accurate as of the date of the entry of this Order, and shall be verified under oath. Defendant shall attach to this completed financial statement copies of all local, state, provincial, and federal income and property tax returns, with attachments and schedules, as called for by the instructions to the financial statements.

RECORD KEEPING PROVISIONS

IV. PRESERVATION OF RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from:

A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately, fairly, and completely reflect Defendant's income, and the disbursements, transactions, dispositions, and uses of Defendant's assets; and

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents, including electronically stored materials, that relate in any way to: the business practices or business or personal finances of Defendant; or the business practices or finances of entities directly or indirectly under the control of Defendant; and

C. Creating, operating, or exercising any control over any business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address, telephone number, e-mail address, and website address of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

ORDER TO SHOW CAUSE AND RELATED PROVISIONS

V. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

IT IS FURTHER ORDERED that, for purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

Julie K. Mayer
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174
(206) 220-4475 [telephone]
(206) 220-6366 [facsimile]
jmayer@ftc.gov

VI. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, electronic mail, personal or overnight delivery, or by U.S. Mail, by agents and employees of the Commission, by any law enforcement agency, or by private process server, upon any person that may have possession or control of any document of Defendant, or that may be subject to any provision of this Order.

VII. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant shall immediately provide a copy of this Order to each of his affiliates, divisions, directors, officers, agents, partners, successors, assigns, employees, attorneys, agents, representatives, sales entities, sales persons, independent contractors, and any other persons in active concert or participation with him. Within ten (10) calendar days from the date of entry of this Order, Defendant shall serve on the Commission an affidavit identifying the name, title,

1 address, telephone number, date of service, and manner of service of each person or entity Defendant
 2 served with a copy of this Order in compliance with this provision.

3 **VIII. CONSUMER REPORTING AGENCIES**

4 **IT IS FURTHER ORDERED** that, pursuant to Section 604(a)(1) of the Fair Credit Reporting
 5 Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer or credit report
 6 concerning Defendant to the Commission.

7 **IX. MOTION FOR LIVE TESTIMONY; WITNESS IDENTIFICATION**

8 **IT IS FURTHER ORDERED** that the question of whether this Court should enter a
 9 preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining
 10 Defendant during the pendency of this action shall be resolved on the pleadings, declarations, exhibits,
 11 and memoranda filed by, oral argument of, and testimony of, the parties. Live testimony from anyone
 12 other than a party shall be heard only on further order of this Court or on motion filed with the Court
 13 and served on counsel for the other parties at least four (4) business days prior to the preliminary
 14 injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number
 15 of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed
 16 witness's expected testimony, and an explanation of why the taking of live testimony would be helpful
 17 to this Court. Any papers opposing a timely motion to present live testimony or to present live
 18 testimony in response to another party's timely motion to present live testimony shall be filed with this
 19 Court and served on the other parties at least two (2) business days prior to the preliminary injunction
 20 hearing in this matter, provided that service shall be performed by personal or overnight delivery, by
 21 electronic filing, or by facsimile, and documents shall be delivered so that they shall be received by the
 22 other parties no later than 4:00 p.m. (Pacific Daylight Time) on the appropriate dates provided in this
 23 Section.

24 *Provided further*, however, that an evidentiary hearing on the Commission's request for a preliminary
 25 injunction is not necessary unless Defendant demonstrates that he has, and intends to introduce,
 26 evidence that raises a genuine material factual issue.

X. DURATION OF THE TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on April 26, 2011, at 5 p.m. (Pacific Daylight Time), unless, within such time, for good cause shown, the Order is extended, or unless Defendant consents that it should be extended for a longer period of time.

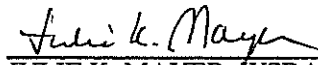
XI. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that Defendant shall appear before this Court, in Courtroom 13106 of the U.S. Courthouse, 700 Stewart Street, Seattle, Washington, on the 26th day of April 2011, at 11 o'clock a.m., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendant, enjoining it from further violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and imposing such additional relief as may be appropriate.

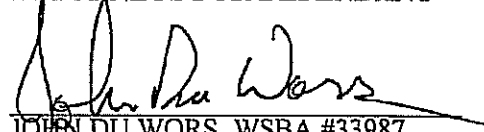
XII. RETENTION OF JURISDICTION

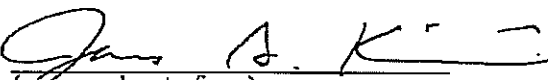
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

ATTORNEYS FOR PLAINTIFF


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SO ORDERED.

DATED this ____ day of April, 2011.


RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

STIPULATED TRO

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2011, I electronically filed the foregoing STIPULATED TEMPORARY RESTRAINING ORDER with the Clerk of the Court using the CM/ECF system and served the foregoing above-referenced document by mailing a true copy thereof to the following non-CM/ECF participants at the addresses listed below by first class mail, deposited with the United States Postal Service, Seattle, WA:

James Kaminski
Dawn Stewart
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1100 Connecticut Avenue, NW
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Attorney for Defendant Tanner Vaughn, individually and d/b/a Lead Expose, Inc., and Uptown Media, Inc.

Dated April 15, 2011

s/Julie K. Mayer
JULIE K. MAYER
Attorney for Plaintiff
Federal Trade Commission